AMENDED IN SENATE MAY 28, 2014

AMENDED IN SENATE APRIL 22, 2014

AMENDED IN SENATE APRIL 9, 2014

SENATE BILL No. 1053

Introduced by Senator Mitchell
(Coauthors: Senators DeSaulnier, Evans, and Wolk)
(Coauthors: Assembly Members Ammiano, Garcia, Mullin, Skinner, Ting, and Wieckowski)

February 18, 2014

An act to amend Section 1367.25 of the Health and Safety Code, and to amend Section 10123.196 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1053, as amended, Mitchell. Health care coverage: contraceptives.

Existing law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various reforms to the health insurance market. Among other things, PPACA requires a nongrandfathered group health plan and a health insurance issuer offering group or individual insurance coverage to provide ~~coverage for and not impose cost sharing requirements~~ *coverage, without imposing cost-sharing requirements,* for certain preventive services, including those preventive care and screenings for women provided in specified guidelines. PPACA requires those plans and issuers to provide coverage without cost sharing for all federal Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity, as prescribed by a provider, except as specified.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan contract or health insurance policy that provides coverage for outpatient prescription drug benefits to provide coverage for a variety of federal Food and Drug Administration (FDA) approved prescription contraceptive methods designated by the plan or insurer, except as specified. Existing law authorizes a religious employer, as defined, to request a contract or policy without coverage of FDA approved contraceptive methods that are contrary to the employer's religious tenets and, if so requested, requires a contract or policy to be provided without that coverage. Existing law requires an individual or small group health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2014, to cover essential health benefits, which are defined to include the health benefits covered by particular benchmark plans.

This bill would require a health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, ~~2015,~~ *2016,* to provide coverage for all FDA approved contraceptive drugs, devices, and products, *except as specified,* as well as voluntary sterilization procedures, contraceptive education and counseling, and related followup services. The bill would prohibit a nongrandfathered plan contract or health insurance policy from imposing any cost-sharing requirements or other restrictions or delays with respect to this coverage, except as specified. The bill would also authorize a plan or insurer to require a prescription to trigger coverage of FDA approved over-the-counter contraceptive methods and supplies. The bill would retain the provision authorizing a religious employer to request a contract or policy without coverage of FDA approved contraceptive methods that are contrary to the employer's religious tenets. Because a willful violation of the bill's requirements by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) California has a long history of expanding timely access to birth control to prevent unintended pregnancy.

(b) The federal Patient Protection and Affordable Care Act includes a contraceptive coverage guarantee as part of a broader requirement for health insurance carriers and plans to cover key preventive care services without out-of-pocket costs for patients.

(c) The Legislature intends to build on existing state and federal law to ensure greater contraceptive coverage equity and timely access to all federal Food and Drug Administration approved methods of birth control, *other than male contraceptives available over the counter,* for all individuals covered by health care service plan contracts and health insurance policies in California.

(d) Medical management techniques such as denials, step therapy, or prior authorization in public and private health care coverage can impede access to the most effective contraceptive methods.

SEC. 2. Section 1367.25 of the Health and Safety Code is amended to read:

1367.25. (a) A group health care service plan contract, except for a specialized health care service plan contract, that is issued, amended, renewed, or delivered on or after January 1, 2000, through December 31, ~~2014,~~ *2015,* inclusive, and an individual health care service plan contract that is amended, renewed, or delivered on or after January 1, 2000, through December 31, ~~2014,~~ *2015,* inclusive, except for a specialized health care service plan contract, shall provide coverage for the following, under general terms and conditions applicable to all benefits:

(1) A health care service plan contract that provides coverage for outpatient prescription drug benefits shall include coverage for a variety of federal Food and Drug Administration (FDA) approved prescription contraceptive methods designated by the plan. In the event the patient's participating provider, acting within his or her scope of practice, determines that none of the methods designated

by the plan is medically appropriate for the patient's medical or personal history, the plan shall also provide coverage for another FDA approved, medically appropriate prescription contraceptive method prescribed by the patient's provider.

(2) Benefits for an enrollee under this subdivision shall be the same for an enrollee's covered spouse and covered nonspouse dependents.

(b) (1) A group or individual health care service plan contract, except for a specialized health care service plan contract, that is issued, amended, renewed, or delivered on or after January 1, ~~2015,~~ *2016,* shall provide coverage for all of the following:

(A) All FDA approved contraceptive drugs, devices, and products, including drugs, devices, and products available over the counter, *other than male contraceptive drugs, devices, and products available over the counter,* as prescribed by the enrollee's provider.

(B) Voluntary sterilization procedures.

(C) Patient education and counseling on contraception.

(D) Followup services related to the drugs, devices, products, and procedures covered under this subdivision, including, but not limited to, management of side effects, counseling for continued adherence, and device removal.

(2) (A) Except for a grandfathered health plan, and subject to ~~subparagraph (B),~~ *subparagraphs (B) and (C),* a health care service plan subject to this subdivision shall not impose a deductible, coinsurance, copayment, or any other cost-sharing requirement on the coverage provided pursuant to this subdivision.

(B) A health care service plan may cover a generic drug, device, or product without cost sharing and impose cost sharing for equivalent nonpreferred or branded drugs, devices, or products. However, if a generic version of a drug, device, or product is not available, or is deemed medically inadvisable by the enrollee's provider, a health care service plan shall provide coverage for the nonpreferred or brand name drug, device, or product without cost sharing.

(C) A health care service plan may impose cost sharing for male voluntary sterilization procedures.

(3) A health care service plan may require a prescription to trigger coverage of FDA approved over-the-counter contraceptive methods and supplies under this subdivision.

(4) Except as otherwise authorized under this section, a health care service plan shall not impose any restrictions or delays on the coverage required under this subdivision.

(5) Benefits for an enrollee under this subdivision shall be the same for an enrollee's covered spouse and covered nonspouse dependents.

(c) Notwithstanding any other provision of this section, a religious employer may request a health care service plan contract without coverage for FDA approved contraceptive methods that are contrary to the religious employer's religious tenets. If so requested, a health care service plan contract shall be provided without coverage for contraceptive methods.

(1) For purposes of this section, a "religious employer" is an entity for which each of the following is true:

(A) The inculcation of religious values is the purpose of the entity.

(B) The entity primarily employs persons who share the religious tenets of the entity.

(C) The entity serves primarily persons who share the religious tenets of the entity.

(D) The entity is a nonprofit organization as described in Section 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

(2) Every religious employer that invokes the exemption provided under this section shall provide written notice to prospective enrollees prior to enrollment with the plan, listing the contraceptive health care services the employer refuses to cover for religious reasons.

(d) Nothing in this section shall be construed to exclude coverage for contraceptive supplies as prescribed by a provider, acting within his or her scope of practice, for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, or for contraception that is necessary to preserve the life or health of an enrollee.

(e) Nothing in this section shall be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter when a plan provides coverage for contraceptive drugs, devices, and products.

(f) Nothing in this section shall be construed to require an individual or group health care service plan contract to cover experimental or investigational treatments.

(g) For purposes of this section, the following definitions apply:

(1) "Grandfathered health plan" has the meaning set forth in Section 1251 of PPACA.

(2) "PPACA" means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules, regulations, or guidance issued thereunder.

(3) With respect to health care service plan contracts issued, amended, or renewed on or after January 1, ~~2015,~~ *2016,* "provider" means an individual who is certified or licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or an initiative act referred to in that division, or Division 2.5 (commencing with Section 1797).

SEC. 3. Section 10123.196 of the Insurance Code is amended to read:

10123.196. (a) An individual or group policy of disability insurance issued, amended, renewed, or delivered on or after January 1, 2000, through December 31, ~~2014,~~ *2015,* inclusive, that provides coverage for hospital, medical, or surgical expenses, shall provide coverage for the following, under the same terms and conditions as applicable to all benefits:

(1) A disability insurance policy that provides coverage for outpatient prescription drug benefits shall include coverage for a variety of federal Food and Drug Administration (FDA) approved prescription contraceptive methods, as designated by the insurer. If an insured's health care provider determines that none of the methods designated by the disability insurer is medically appropriate for the insured's medical or personal history, the insurer shall, in the alternative, provide coverage for some other FDA approved prescription contraceptive method prescribed by the patient's health care provider.

(2) Coverage with respect to an insured under this subdivision shall be identical for an insured's covered spouse and covered nonspouse dependents.

(b) (1) A group or individual policy of disability insurance, except for a specialized health insurance policy, that is issued,

amended, renewed, or delivered on or after January 1, ~~2015,~~ *2016,* shall provide coverage for all of the following:

(A) All FDA approved contraceptive drugs, devices, and products, including drugs, devices, and products available over the counter, *other than male contraceptive drugs, devices, and products available over the counter,* as prescribed by the insured's provider.

(B) Voluntary sterilization procedures.

(C) Patient education and counseling on contraception.

(D) Followup services related to the drugs, devices, products, and procedures covered under this subdivision, including, but not limited to, management of side effects, counseling for continued adherence, and device removal.

(2) (A) Except for a grandfathered health plan, and subject to ~~subparagraph (B),~~ *subparagraphs (B) and (C),* a disability insurer subject to this subdivision shall not impose a deductible, coinsurance, copayment, or any other cost-sharing requirement on the coverage provided pursuant to this subdivision.

(B) A disability insurer may cover a generic drug, device, or product without cost sharing and impose cost sharing for an equivalent nonpreferred or branded drug, device, or product. However, if a generic version of a drug, device, or product is not available, or is deemed medically inadvisable by the insured's provider, a disability insurer shall provide coverage for the nonpreferred or brand name drug, device, or product without cost sharing.

(C) A disability insurer may impose cost sharing for male voluntary sterilization procedures.

(3) An insurer may require a prescription to trigger coverage of FDA approved over-the-counter contraceptive methods and supplies under this subdivision.

(4) Except as otherwise authorized under this section, an insurer shall not impose any restrictions or delays on the coverage required under this subdivision.

(5) Coverage with respect to an insured under this subdivision shall be identical for an insured's covered spouse and covered nonspouse dependents.

(c) Nothing in this section shall be construed to deny or restrict in any way any existing right or benefit provided under law or by contract.

(d) Nothing in this section shall be construed to require an individual or group disability insurance policy to cover experimental or investigational treatments.

(e) Notwithstanding any other provision of this section, a religious employer may request a disability insurance policy without coverage for contraceptive methods that are contrary to the religious employer's religious tenets. If so requested, a disability insurance policy shall be provided without coverage for contraceptive methods.

(1) For purposes of this section, a "religious employer" is an entity for which each of the following is true:

(A) The inculcation of religious values is the purpose of the entity.

(B) The entity primarily employs persons who share the religious tenets of the entity.

(C) The entity serves primarily persons who share the religious tenets of the entity.

(D) The entity is a nonprofit organization pursuant to Section 6033(a)(2)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

(2) Every religious employer that invokes the exemption provided under this section shall provide written notice to any prospective employee once an offer of employment has been made, and prior to that person commencing that employment, listing the contraceptive health care services the employer refuses to cover for religious reasons.

(f) Nothing in this section shall be construed to exclude coverage for contraceptive supplies as prescribed by a provider, acting within his or her scope of practice, for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, or for contraception that is necessary to preserve the life or health of an insured.

(g) This section shall only apply to disability insurance policies or contracts that are defined as health benefit plans pursuant to subdivision (a) of Section 10198.6, except that for accident only, specified disease, or hospital indemnity coverage, coverage for benefits under this section shall apply to the extent that the benefits are covered under the general terms and conditions that apply to all other benefits under the policy or contract. Nothing in this

section shall be construed as imposing a new benefit mandate on accident only, specified disease, or hospital indemnity insurance.

(h) For purposes of this section, the following definitions apply:

(1) "Grandfathered health plan" has the meaning set forth in Section 1251 of PPACA.

(2) "PPACA" means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules, regulations, or guidance issued thereunder.

(3) With respect to policies of disability insurance issued, amended, or renewed on or after January 1, ~~2015,~~ *2016*, "health care provider" means an individual who is certified or licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or an initiative act referred to in that division, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O